

JAMES F. BURKE, ET AL.

IBLA 98-39      Decided March 29, 1999

Appeal from a decision of the Arizona State Office, Bureau of Land Management, rejecting amended location notices for a placer mining claim. AMC 336180.

Affirmed as modified.

1. Mining Claims: Location–Mining Claims: Placer Claims

The general mining law requires that placer mining claims be located "as near as practicable with the United States system of public land surveys." 30 U.S.C. § 35 (1994). As a general rule, claimants whose locations fail to conform to the rectangular system of survey are afforded an opportunity to cure such defects prior to a declaration of invalidity.

2. Mining Claims: Location–Mining Claims: Placer Claims

Under 43 C.F.R. § 3833.0-5(p), an amended location is one made in furtherance of an earlier valid location that may or may not take in different or additional unappropriated ground.

3. Mining Claims: Location–Mining Claims: Placer Claims

No location of a placer mining claim on Federal lands may include more than 20 acres for each individual claimant. Four claimants may locate an association placer claim of no more than 80 acres, and an amendment of an 80-acre association placer claim to include an additional 80 acres will be rejected. No right to adjust the claim to delete excess acreage is available because the inclusion of 80 excess acres in an amended location is not considered to be inadvertent.

APPEARANCES: James F. Burke, Chino Valley, Arizona, for appellants.

## OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

James F. Burke, Noel Riner, Jim McKee, and Bryan Timm, co-owners of the Crazy 8 - 1-2-3-4 (Crazy 8) association placer mining claim (AMC 336180), have appealed from the September 24, 1997, decision of the Arizona State Office, Bureau of Land Management (BLM), rejecting two amended location notices submitted for that claim. 1/

On November 24, 1995, Burke filed a notice of location for the Crazy 8 placer with BLM for recordation. The notice, listing Burke, Riner, McKee, and Timm as co-owners, stated that the claim had been located on September 5, 1995, was 5,280 feet long and 660 feet wide, and embraced lands within sec. 20, T. 12½ N., R. 2 W., and secs. 32 and 33, T. 13 N., R. 2 W., Gila & Salt River Meridian (G&SRM), Yavapai County, Arizona. The notice tied the NE corner of the claim to the intersection of Indian Creek Road and Lily Creek Mine Road, stating that the corner was "2640 feet in a west direction to" the intersection. It further specified that

[t]he bearing and distance between the corners of the claim are beginning at the NW corner of the claim, 5280 feet in a[n] East direction to the NE corner, then 660 feet in a South direction to the SW corner, then 5280 feet in a West direction to the NW corner, then 660 feet in a North direction to the point of beginning. [2/]

On January 17, 1996, Burke filed an amendment to the location notice for the Crazy 8 placer for the stated purpose of "chang[ing] the corners." The notice placed the amended claim completely in secs. 32 and 33, T. 13 N., R. 2 W., G&SRM. The amendment variously sited the SW corner of the claim "650 feet in a 33° east to north direction of USGSM brass cap R2W T13N sec 32 & 33 - R2W T12½ N sec 21", and "5280 feet in an easterly direction to" the brass cap. 3/ It delineated the bearing and distance between the corners of the amended claim as

beginning at the NW corner of the claim, 5280 feet in a[n] easterly direction to the NE corner, then 1320 feet in a south direction to the SW corner, then 5280 feet in a westerly direction to the NW corner, then 1320 feet in a north direction to the point of beginning. [4/]

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1/ On Dec. 29, 1997, one Thomas D. Patrick submitted a document to this Board titled "Request for Administrative Decision." Patrick has disclosed no interest in the claims at issue in this appeal and is a stranger to BLM's decision. We have given no consideration to the document.

2/ This description of bearing and distance contains two obvious errors: the corner located 660 feet south from the NE corner should be the SE, not the SW, corner, and the corner 5,280 feet west from the SE corner should be the SW, not the NW, corner.

3/ The map of the claim provided as part of the notice appears to situate the SW corner at a point 660 feet north, 33° west of the brass cap.

4/ This description continued the two errors in the original location notice. See note 2, *supra*.

Burke filed another amended location notice for the Crazy 8 placer on November 14, 1996, stating that the purpose of the amendment was to "change & omit NE 20 acres approx." This amendment modified the bearing and distances between the corners found in the earlier amendment but perpetuated the inconsistent positions of the SW corner contained in the January 17, 1996, amendment and the original and earlier amended location notices' misdesignation of the corners:

The bearing and distance between the corners of the claim are beginning at the NW corner of the claim, 1635 feet in a[n] easterly direction to the NE corner, then 1320 feet in a south direction to the SW corner, then 2640 feet in a westerly direction to the NW corner, then 1320 feet in a north direction to the point of beginning.

In its September 24, 1997, decision, BLM rejected both amendments to the location notice for the Crazy 8 placer. BLM rejected the January 17, 1996, notice on the ground that it did not meet the requirements of an amendment because it changed the location of the claim and was, therefore, a relocation requiring a new original location notice, not an amended location. BLM rejected the November 14, 1996, amendment because the lands contained in that amendment were based on the rejected January 17, 1996, notice.

On appeal, Burke explains that he filed the January 17, 1996, amendment after discovering that the Crazy 8 placer had been staked over a portion of the Lucky Kathy claim. He contends that this amendment moved only the westerly corner stakes of claim #4 of the Crazy 8 placer without modifying or repositioning any other claim corner, and thus did not establish a "new" claim. Burke further asserts that an October 1996 telephone call from BLM advising that the Crazy 8 placer conflicted with the Lady Bug claim and requesting the amendment of the Crazy 8 placer to exclude the overlapping area precipitated the November 14, 1996, amendment. That amendment, Burke submits, simply excluded the area within the allegedly prior existing claim and did not establish a new claim or even modify the external corners of the Crazy 8 placer. Burke argues that he has followed the letter and spirit of all rules and regulations concerning proper procedures governing mining claims, and that the January 17, 1996, amendment, which had been accepted by BLM as an amendment for over 1-1/2 years, was a minor modification which did not cause or require the establishment of a new claim. 5/

[1] The general mining law requires that placer mining claims be located "as near as practicable with the United States system of public

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5/ We note that, although Burke interprets BLM's decision as divesting him of his original claim rights pending a successful appeal, that decision explicitly states that the BLM records "reflect the legal description of the claim as originally located" (Decision at 1), and thus does not eradicate any of the rights appurtenant to the original location. However, that location must be conformed to the rectangular system of survey, if feasible.

land surveys." 30 U.S.C. § 35 (1994). In this case, neither the original Crazy 8 location notice nor the amended location notices described the claim in accordance with the rectangular system of survey. As a general rule, claimants whose locations fail to conform to the rectangular system of survey are afforded an opportunity to cure such defects prior to a declaration of invalidity. Melvin Helit, 146 IBLA 362, 368 (1998); Fred B. Orman, 52 L.D. 467, 471 (1928). In this case, however, BLM has not declared the original Crazy 8 claim null and void. Instead, it has rejected the two amendments filed for that claim.

The original claim location notice states that the claim is located within sec. 20, T. 12½ N., R. 2 W., and secs. 32 and 33, T. 13 N., R. 2 W., G&SRM. The map included as part of the location notice shows that the southern portion of the claim is in sec. 20. The majority of the claim is located in sec. 32 with only a small part of the easternmost portion of the claim crossing the boundary into sec. 33. Calculating the dimensions of the claim, as provided on the location notice, shows that the claim embraces 80 acres.

The amended location notice filed with BLM on January 17, 1996, states that the claim is located in secs. 32 and 33. It also gives the dimensions of the claim, which cover 160 acres, an area double the size of the original claim. Burke's assertion at page 1 of the Notice of Appeal that the claimants moved only the "westerly corner stakes of the claim #4 of the Crazy 8-1 thru 4," and that "[n]o other corners of the claim were modified or relocated" is inconsistent with the information on the face of the location notice. Moreover, the map included as part of the amended location notice shows that the claim has been moved substantially to the east, such that the vast majority of the claim is located in sec. 33, rather than in sec. 32, with the entire claim lying north of sec. 21. A comparison of the map accompanying the original claim with the map for the January 17, 1996, amendment shows little acreage common to the original location and the amendment.

[2] Departmental regulation 43 C.F.R. § 3833.0-5(p) defines an amended location as "a location that is in furtherance of an earlier, valid location and that may or may not take in different or additional unappropriated ground." See also Keith Lauderbaugh, 142 IBLA 331, 333 (1998); R. Gail Tibbetts, 43 IBLA 210, 216-17, 86 I.D. 538, 541-42 (1979), overruled in part on other grounds in, Hugh B. Fate, Jr., 86 IBLA 215, 226 (1985). Earlier Board decisions rejecting amended locations embracing different or additional lands generally arose where the additional lands claimed by the amendment had been withdrawn or segregated from mineral entry prior to the purported amendment and thus were not unappropriated ground. See Keith Lauderbaugh, *supra*, and cases cited therein; see also R. Gail Tibbetts, 43 IBLA at 217, 86 I.D. at 542.

[3] In this case, the four claimants who originally located 80 acres have attempted in the January 1996 amendment to include 160 acres in their location. This they cannot do. A placer mining claim location may include no more than 20 acres for each individual claimant. 30 U.S.C. § 35 (1994); United States v. King, 34 IBLA 15, 22 (1978). Thus, four claimants may locate an association placer claim embracing a maximum of 80 acres.

In Melvin Helit, 146 IBLA at 368, we stated:

While it is true that, as a general rule, claimants whose locations either fail to conform to the rectangular system of survey or contain excess acreage are afforded an opportunity to cure these defects prior to a declaration of invalidity (see, e.g., Fred B. Ortman, 52 L.D. 467, 471 (1928) (nonconformity to survey); Samuel P. Barr, Sr., 65 IBLA 167 (1982) (excess acreage)), this rule is not without exceptions. Thus, as we noted in Melvin Helit, [144 IBLA 230 (1998)], the right to adjust a claim to delete excess acreage is only available where the inclusion of excess acreage in the first instance was inadvertent. Cf. Waskey v. Hammer, 223 U.S. 85, 90 (1912); Zimmerman v. Funchion, 161 F. 859, 860 (9th Cir. 1908).

Because the original location was for 80 acres, claimants in this case could not include any additional acreage in an amended location. Amending a claim to include an additional 80 acres cannot be considered inadvertent. Accordingly, BLM is not required to give the claimants notice of the excess and an opportunity to redraw the boundaries.

BLM rejected Burke's January 17, 1996, amendment solely because the amendment changed the location of the claim. Although we find that ground an insufficient basis for rejection, excess acreage is a proper ground for rejection under the facts of this case. Therefore, we affirm BLM's decision, as modified.

Claimants' November 14, 1996, amended location notice contains a description of a claim with four sides: 1,635 feet by 1,320 feet by 2,640 feet by 1,320 feet. Yet, the map provided as part of that amended notice shows a claim with eight sides. Burke asserts on appeal that the only difference between the January 1996 amendment and the November 1996 amendment is deletion of approximately 20 acres, which, if true, would still result in a claim with approximately 60 excess acres. The November 1996 amendment, which purports to amend the January 1996 amendment, was properly rejected by BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed as modified.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

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Gail M. Frazier  
Administrative Judge

